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HIGH COURT OF CHHATTISGARH AT BILAS

Writ Petition (S) No. 2276 of 2006

Petitioner:		Gopinath Izardar, S/o Makhansai, Aged about 65 years, Retired teacher, R/o Bade Nawapara, Thasil – sarangarh,Distt.-Raigarh (C.G.)
	Versus	
Respondents:	1.	The State of Chhattisgarh, Through – Secretary, Tribal Welfare department, D.K.S. Bhawan, Raipur (C.G.)
	2.	Assistant Commissioner, Tribal welfare department, Division – Raigarh, Dist.-Raigarh (C.G.)
	3.	Joint Director, Accounts treasury and pension, Bilaspur.
	4.	Collector, Raigarh.
	5.	District Education Officer, Raigarh.
	6.	Block Education Officer, Baramkela,Distt.-Raigarh(C.G.)

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri**.

Shri Sanjay Patel, Advocate for the petitioner.

Smt. Anju Ahuja, Deputy Govt. Advocate for the respondents.

ORDER

(Passed on this 25th day of April, 2007)

1. The petitioner is aggrieved by the action of the respondents whereby the respondents are intending to recover a sum of Rs. 2,98,408, as per the Chart (Annexure P/3), as excess payment made to the petitioner.

2. The brief facts, in nutshell, are that the petitioner was appointed on the post of Teacher vide order dated 5.9.1964 (Annexure P/1). Since the petitioner had completed 24 years of service as on

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11.9.1988 he was given the benefit of the pay scale of Rs. 5000-8000/- vide order dated 25.1.2002 (Annexure P/2). The petitioner retired from the service on attaining the age of superannuation w.e.f. 31.7.2004. According to the petitioner, after his retirement from service, when he approached the concerned respondent for payment of his retiral dues, it was informed to the petitioner that a Chart (Annexure P/3) is prepared, according to which a sum of Rs. 2,98,408/- is recoverable from the petitioner.

3. Learned counsel appearing for the petitioner submits that there is no fault on the part of the petitioner and the amount is paid to him in accordance with the pay scales, revised by the respondents from time to time. The respondents cannot recover the amount, already paid to the petitioner, after such a long period, after his retirement, that too without following the principles of natural justice.

4. Per contra, learned counsel appearing for the respondents submits that the petitioner had submitted undertakings dated 6.4.1990, 8.6.1998 and 2.11.2004 (Annexure R/3) that if any excess payment in his salary and dearness allowance is made, the respondents would be entitled to deduct the same from his pension and gratuity.

5. The Supreme Court in the case of **Sahib Ram Vs. State of Haryana and others**[1] in para 5 has held as under:-

> *"5. Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on the revised scale. However, it is not on account of any*

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misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant......"

6. This Court in the case of **Vidyadhar Tiwari Vs. State of Chhattisgarh & others**[2] has held that for the excess payment, if any, made to the petitioner, he was not at fault and the amount received by him might have been used by adjusting himself accordingly treating the same as his salary. At this stage, directing recovery of the alleged excess amount from the pensionary benefits of the petitioner will not be just and proper.

7. In view of the foregoing, this petition stands disposed of in terms of the order passed in the case of **Vidyadhar Tiwari** (Supra). However, in the facts of the case the respondents/authorities are at liberty to hold an enquiry and pass appropriate order after affording an opportunity of hearing to the petitioner, if so advised. Consequently M(W)P No. 1735/2006 stands disposed of.

Sd/-
Satish K.Agnihotri
Judge

{ 1995 Supp (1) S.C.C. 20[1],
{ 2006 (1) M.P.H.T. 105 (C.G.)[2] }

Thakur